

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

TAMMY GRAHAM,	)	
	)	
Plaintiff,	)	No. 03:13-cv-01962-HU
	)	
vs.	)	
	)	
FOREVER YOUNG OREGON, LLC,	)	<b>ORDER ON</b>
an Oregon corporation;	)	<b>MOTION FOR DEFAULT JUDGMENT</b>
RONALD ZEMP; and JENNIFER	)	
ZEMP;	)	
	)	
Defendants.	)	

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Eric J. Fjelstad  
Smith & Fjelstad  
722 N. Main Avenue  
Gresham, OR 97030

Attorney for Plaintiff

HUBEL, Magistrate Judge:

On November 5, 2013, the plaintiff filed this case against the defendants, alleging failure to pay straight time and mandatory overtime wages in violation of the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and Oregon wage-and-hour laws, specifically ORS § 652.140 *et seq.*, and ORS § 653.261. Dkt. #1.

On January 10, 2014, a Summons was issued to the Registered Agent for the corporate defendant Forever Young Oregon, LLC ("Forever Young"). Dkt. #4. On March 18, 2014, an Affidavit of Service was filed showing that on January 16, 2014, a process

1 server served a copy of the summons, Complaint, and Civil Case  
2 Management Order on the receptionist for Forever Young's  
3 registered agent. In the Affidavit of Service, the process  
4 server indicated the receptionist was "authorized to accept  
5 service on behalf of the registered agent." Dkt. #10. When  
6 Forever Young failed to move or plead in response to the  
7 Complaint, on March 13, 2014, the plaintiff filed an *ex parte*  
8 motion for entry of default against Forever Young. At a status  
9 conference on April 9, 2014, the Court orally granted the motion  
10 for entry of default against Forever Young, see Dkt. #16, and on  
11 April 10, 2014, a paper Order of Default was entered to  
12 memorialize the Court's ruling. Dkt. #16.

13 The case currently is before the court on the plaintiff's  
14 motion for default judgment, and motion for attorney's fees and  
15 costs, against the corporate defendant. Dkt. ##17, 19. The  
16 court finds further evidence is required, and therefore **reserves**  
17 ruling on the motions.

### 18 ***DISCUSSION***

19  
20 The plaintiff argues the Clerk of Court should enter  
21 judgment in this case because her claim is for a sum certain.  
22 Federal Rule of Civil Procedure 55(b) specifies two ways in  
23 which a plaintiff can obtain a judgment when the defendant is in  
24 default, one involving entry of judgment by the Clerk of Court,  
25 and one requiring entry of judgment by the court. Under  
26 subsection (1), so long as the defendant "is neither a minor nor  
27 an incompetent person," the Clerk of Court must enter a default  
28 judgment when "the plaintiff's claim is for a sum certain or a

1 sum that can be made certain by computation[.]” Fed. R Civ. P.  
2 55(b)(1). Here, the defendant against whom Graham seeks default  
3 judgment is a corporation, which clearly is neither a minor nor  
4 an incompetent person.

5 The Ninth Circuit has observed that there is a “paucity of  
6 federal case law” regarding the “sum certain requirement,” con-  
7 cluding “a claim is not a sum certain unless no doubt remains as  
8 to the amount to which a plaintiff is entitled as a result of  
9 the defendant’s default.” *Franchise Holding II, LLC v.*  
10 *Huntington Restaurants Group, Inc.*, 375 F.3d 922, 928-29 (9th  
11 Cir. 2004) (adopting the First Circuit’s approach in *KPS &*  
12 *Assocs., Inc. v. Designs By FMC, Inc.*, 318 F.3d 1, 19 (1st Cir.  
13 2003)). In *Franchise Holding II*, the court found the sum  
14 certain requirement was satisfied where the plaintiff provided  
15 the court with “loan documents that set forth the specific  
16 formulas for determining the amount owed,” and “documents  
17 setting forth the various amounts necessary for calculating the  
18 total amount due.” *Id.*, 375 F.3d at 929. However, if the “sum  
19 certain” of a plaintiff’s claim cannot be calculated reasonably  
20 by simple computation, and other evidence is required, then the  
21 plaintiff must apply to the court for a default judgment  
22 pursuant to Rule 55(b)(2).

23 Graham alleges Forever Young failed to pay her straight time  
24 and overtime wages as required by law, and she also seeks  
25 penalty wages under Oregon law. Graham argues her unpaid wages  
26 and statutory damages can be made certain by computation from  
27 the evidence she has provided, meeting the requirements for the  
28 Clerk of Court to enter a default judgment pursuant to Rule

1 55(b)(1). Graham's attorney Eric J. Fjelstad has submitted a  
2 declaration setting forth the step-by-step process he employed  
3 to determine the amounts of Graham's unpaid wages under Oregon  
4 law, liquidated damages under the FLSA, and statutory penalties  
5 under Oregon law. Dkt. #18, ¶¶ 4 & 5. Mr. Fjelstad indicates he  
6 made these calculations from detailed copies of Graham's work  
7 schedules and pay stubs for each pay period. *Id.*, ¶ 4. The  
8 record does not contain a declaration from Graham, herself,  
9 regarding the amounts she claims she is owed, nor did Graham  
10 sign the Complaint in the case. Indeed, in the Complaint, Graham  
11 indicates the amounts of damages she alleges would "be proved at  
12 trial, but [were] asserted for purposes of this complaint[.]"  
13 Dkt. #1, ¶ 14. This suggests that the amount of Graham's  
14 damages remained uncertain at the time the Complaint was filed.  
15 Further, the documentary evidence upon which Mr. Fjelstad  
16 indicates he relied is not present anywhere in the record. As  
17 such, even taking the factual allegations in the Complaint as  
18 true, the court cannot say there is no doubt as to the amount to  
19 which Graham is entitled as a result of Forever Young's default.  
20 Because the court must conduct further investigation in order to  
21 determine the amount of damages, the court finds Graham has not  
22 met the requirements for automatic entry of default judgment by  
23 the Clerk of Court pursuant to Rule 55(b)(1). *See, e.g.,*  
24 *Volstad v. Collings*, 983 F.2d 1080 (Table), 1993 WL 7251, at \*2  
25 (9th Cir. Jan. 13, 1993) (Rule 55(b)(1) "carefully limits the  
26 clerk's authority to those cases where the entry of judgment is  
27 purely a ministerial act, since sound policy dictates that the  
28 clerk should not be invested with discretionary power.")

1 (internal quotation marks, notations, and citations omitted).  
2 Thus, the court will consider Graham's motion for default judg-  
3 ment pursuant to Rule 55(b)(2). *See, e.g., Franchise Holdings*  
4 *II, LLC*, 375 F.3d at 928-29 (citation omitted).

5 The court finds additional evidence is required in order to  
6 provide a sufficient evidentiary basis to support Graham's  
7 claims for damages. The court has discretion to determine  
8 whether such evidence should be presented at a hearing, or  
9 alternatively, whether a review of detailed affidavits and  
10 documentary evidence is sufficient. *See* Fed. R. Civ. P.  
11 55(b)(2); *Davis v. Fendler*, 650 F.2d 1154, 1161-62 (9th Cir.  
12 1981) (affirming default judgment with damages assessed based on  
13 documentary evidence); *Fustok v. ContiCommodity Servs., Inc.*,  
14 873 F.2d 38, 40 (2d Cir. 1989) (court has discretion to hold  
15 evidentiary hearing, or to rely solely on detailed affidavits or  
16 documentary evidence to evaluate damages); *Santiago v. Tamarack*  
17 *Tree Co.*, 2007 WL 3171159 (D. Or. July 13, 2007) (Hubel, MJ)  
18 (citing *Davis* and *Fustok*).

19 In the present case, the court finds it appropriate to order  
20 the plaintiff to submit a detailed declaration and supporting  
21 documentary evidence, and to determine after review of such  
22 evidence whether an evidentiary hearing will be necessary.

23 Accordingly, the court **reserves** ruling on the plaintiff's  
24 motion for default judgment. **By July 28, 2014**, the plaintiff is  
25 directed to submit a detailed declaration, with supporting  
26 documentation, to show how she has calculated the damages she  
27 claims are due her from Forever Young.

28 IT IS SO ORDERED.

1 Dated this 14th day of July, 2014.

2  
3 /s/ Dennis J. Hubel

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Dennis James Hubel  
Unites States Magistrate Judge